

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 1106

INTRODUCER: Senator Crist

SUBJECT: Credit Cards/Fraudulently Taking or Using

DATE: March 23, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Favorable
2.	_____	_____	JA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill makes it unlawful for a person to possess, receive, or retain custody of a credit card with knowledge that the card has been taken from the cardholder without his or her consent. The bill also modifies an element of an existing offense.

The bill also increases the penalty for any violation of s. 817.60(1), F.S. (theft by taking or retaining possession of a credit card taken), from a first degree misdemeanor to an unranked third degree felony.

This bill substantially amends section 817.60(1) of the Florida Statutes.

II. Present Situation:

Section 817.60(1), F.S., is part of Part II of ch. 817, F.S., which is the 1967 “State Credit Card Crime Act.”¹ This subsection provides that it is unlawful for a person:

- To take a credit card from a cardholder without his or her consent; or
- With knowledge that a credit card has been so taken, to receive the card with the intent to use it, sell it, or transfer it to a person other than the issuer or the cardholder.

A person who commits a violation of this subsection is subject to the penalties set forth in s. 817.67(1), F.S. Section 817.67(1), F.S., provides that a person who is subject to the penalties of this subsection is guilty of a first degree misdemeanor.

¹ Section 817.57, F.S.

Section 817.60(1), F.S., also specifies that taking a credit card without consent includes obtaining it by conduct defined or known as statutory larceny, common-law larceny by trespassory taking, common-law larceny by trick or embezzlement or obtaining property by false pretense, false promise or extortion.

III. Effect of Proposed Changes:

The bill amends s. 817.60, F.S., to make it unlawful for a person to possess, receive, or retain custody of a credit card with knowledge that the card has been taken from the cardholder without his or her consent.

The bill also modifies an element of an existing offense. Currently s. 817.60(1), F.S., provides, in part, that it is unlawful for a person, with knowledge that a credit card has been so taken, to receive the card with the intent to use it, sell it, or transfer it to a person other than the issuer or the cardholder. The bill removes the knowledge element.

The bill also increases the penalty for violations of s. 817.60(1), F.S., from a first degree misdemeanor to an unranked third degree felony by indicating that a person who violates s. 817.60(1), F.S., is subject to the penalties provided in s. 817.67(2), F.S. Section 817.67(2), F.S., provides that a person who is subject to the penalties of this subsection is guilty of a third degree felony.² This change means that the maximum punishment for this crime will increase from up to 1 year in jail, a fine of up to \$1,000, or both imprisonment and a fine to up to 5 years in state prison, a fine of up to \$5,000, or both imprisonment and a fine.³

The effective date of the bill is July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

² The third degree felony is unranked. An unranked third degree felony is a felony that is not specifically ranked in the offense severity ranking chart of the Criminal Punishment Code (s. 921.0022, F.S.). An unranked third degree felony is assigned a ranking of level 1 pursuant to s. 921.0023, F.S. A first-time offender who is convicted of this offense and has no additional offenses will score a non-prison sanction, such as probation, as the lowest permissible sentence. The court has the discretion to impose a sentence that is within a sentencing range: a non-prison sanction to up to 5 years in state prison.

³ Sections 775.082 and 775.083, F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that SB 1106 will have an insignificant prison bed impact.⁴ The jail bed impact of the bill, if any, is unknown.

VI. Technical Deficiencies:

There is a minor grammatical error in the bill. Based on the grammatical rule of subject-verb agreement, the verb “possess” (line 25) should be “possesses,” since the subject of the sentence, “a person,” is singular.

VII. Related Issues:

In August of 2009, a Miami man and two co-defendants were indicted in New Jersey “in an elaborate scheme to steal more than 130 million credit cards -- reselling them on the worldwide black market.” “Prosecutors said the case is the largest credit and debit card data breach ‘ever charged in the United States.’”⁵

According to the Federal Trade Commission, Florida ranked third in the nation for identity theft complaints for the time period of January 1, 2008 to December 31, 2008.⁶

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

⁴ Office of Economic & Demographic Research, The Florida Legislature, <http://edr.state.fl.us/>.

⁵ Rob Barry, Michael Sallah, and Nirvi Shah, “Miami hacker accused of record credit card theft,” Section A, p. 1, *Miami Herald* (August 17, 2009). Article acquired through LexisNexis News.

⁶ *Identity Theft Consumer Complaint Data, Florida, January 1 – December 31, 2008, Federal Trade Commission*, <http://www.ftc.gov/bcp/edu/microsites/idtheft/downloads/CY2008/Florida%20CY-2008.pdf>. Complaints consist of self-reported and unverified consumer complaints to the Consumer Sentinel Network database.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
